

# Merchant & Gould

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United States Department of Commerce  
PATENT AND TRADEMARK OFFICE  
401 Dulany Street  
Alexandria, VA 22313

RE:

Dear Sir/Madam:

The enclosed document was received in our office on 05/01/2006. We believe we have received this document in error.

If you have any questions or concerns regarding this matter, please feel free to contact our office at the number above.

Sincerely,

MERCHANT & GOULD  
Prosecution Docket Department

Enclosure

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Denver

Seattle

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,847	10/17/2003	Michael T. Treiman	47994/THD/D359	9588

23363 7590 04/11/2006  
CHRISTIE, PARKER & HALE, LLP  
PO BOX 7068  
PASADENA, CA 91109-7068

EXAMINER

CONLEY, SEAN EVERETT

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Che

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No. 10/687,887 MAY 10 2006	Applicant(s) TREIMAN, MICHAEL T.	
	Examiner Sean E. Conroy	Art Unit 1744	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 26, 40 and 41.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-25 and 27-39.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.


#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See attached Interview Summary PTOL-413.

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments, filed December 8, 2005, have been considered and are not persuasive. The applicant argues that the reference to Sand et al. (U.S. Patent No. 6,655,401 B2) only discloses a block valve (34) and does not teach a second valve to mix water and the concentrated sterilant as claimed by the applicant. The examiner respectfully disagrees. First, currently presented independent claims 1, 10 and 27 do not explicitly recite a second valve separate from the pressure regulating valve. Therefore, the use of the phrase "a valve" in claim 1, line 12, in claim 10, line 12, and in claim 27, line 10, is interpreted as referring to the pressure regulating valve. Furthermore, even if claims 1, 10, and 27 included language to distinguish between the pressure regulating valve and a second valve (as done in independent claim 19), the reference of Sand et al. discloses a first ball valve (34) for controlling the flow of water and a single selection control with lever (52) for controlling the mixing of the concentrated chemical sterilant with the flow of water. The single selection control includes a position when no mixed fluids are emitted from the outlet (48), thus functioning as a blocking valve that controls mixing of the fluids. Therefore, the reference to Sand et al. discloses both a water pressure regulating valve (ball valve (34)) and a block valve (single selection control with lever (52)) to control mixing and flow into and from the eductor.

Amended claims 27 and 36 would be rejected with the same rejection used to reject claims 27 and 36 in the Final Rejection dated October 28, 2005.

A.C.C.  
4/7/06

  
GLADYS JP CORCORAN  
SUPERVISORY PATENT EXAMINER